

THE HONORABLE JOHN H. CHUN

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

AMAZON.COM, INC., a corporation,

Defendant.

CASE NO.: 2:23-cv-01495-JHC

PLAINTIFFS' MOTION TO SEAL

NOTE ON MOTION CALENDAR:
May 17, 2024

Pursuant to Local Civil Rule 5(g) and § 5.6 of the Protective Order (Dkt. #160), Plaintiffs respectfully move the Court to temporarily seal Exhibit B and portions of Exhibit E to the Declaration of Emily K. Bolles in Support of Plaintiffs' Motion to Compel Production of Documents Related to Spoliation, and to permanently seal portions of Exhibits B-E, G, and L.

Amazon is asserting confidentiality over all of Exhibit B and portions of Exhibit E (highlighted in blue in the version filed under seal). Plaintiffs request that the Court temporarily seal those documents so that Amazon has an opportunity to provide its basis for sealing, as required by LCR 5(g)(3)(B).

1 Plaintiffs also respectfully request that the Court permanently seal narrow portions of
 2 Exhibits B-E, G, and L that refer to a nonpublic FTC investigation. Those portions of Exhibits B-
 3 E, G, and L are highlighted in yellow in the versions filed under seal.

4 Pursuant to Local Civil Rule 5(g)(3)(A), the undersigned counsel certify that they met
 5 and conferred with Amazon in an attempt to reach agreement on the need to file any documents
 6 associated with Plaintiffs' Motion to Compel Production of Documents Related to Spoliation
 7 under seal. Declaration of Emily K. Bolles in Support of Plaintiffs' Motion to Seal ("Bolles
 8 Decl.") at ¶¶ 2-5. The parties have narrowed the issues in dispute but have not been able to reach
 9 an agreement. *Id.* at ¶ 6.

10 **ARGUMENT**

11 **I. THE COURT SHOULD TEMPORARILY SEAL EXHIBIT B AND PORTIONS** 12 **OF EXHIBIT E TO ALLOW AMAZON AN OPPORTUNITY TO FILE A** **"SPECIFIC STATEMENT" SUPPORTING ITS REQUEST TO SEAL.**

13 "Historically, courts have recognized a 'general right to inspect and copy public records
 14 and documents, including judicial records and documents.'" *Kamakana v. City & Cnty. of*
 15 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435
 16 U.S. 589, 597 & n.7 (1978)). Accordingly, when a court considers a request to seal, "a strong
 17 presumption in favor of access is the starting point." *Id.* at 1178 (internal quotation marks and
 18 citations omitted); *see also* W.D. Wash. LCR 5(g) ("There is a strong presumption of public
 19 access to the court's files."). Courts apply a "good cause" standard when considering requests to
 20 seal materials in connection with non-dispositive motions. *Kamakana*, 447 F.3d at 1180.

21 Amazon asserts that Exhibit B and the portions of Exhibit E highlighted in blue should be
 22 sealed. Bolles Decl. ¶¶ 7-8. If Amazon files a specific statement supporting its request to seal, as
 23
 24

required by Local Civil Rule 5(g)(3)(B), Plaintiffs will address Amazon's asserted grounds for sealing in their reply brief.¹

II. THE COURT SHOULD PERMANENTLY SEAL PORTIONS OF EXHIBITS B-E, G, AND L THAT REFER TO A NONPUBLIC FTC INVESTIGATION.

Plaintiffs request that the Court permanently seal narrow portions of Exhibits B-E, G, and L that refer to a nonpublic FTC investigation, *see* Bolles Decl. ¶ 9, which the FTC is required to keep confidential. *See* 15 U.S.C. § 18a(h); 15 U.S.C. § 57b-2(c). These confidentiality obligations are good cause to maintain these portions of Exhibits B-E, G, and L under seal. Plaintiffs are filing public redacted versions of Exhibits C-E, G, and L, and will file a public redacted version of Exhibit B if the Court denies Amazon's request to seal Exhibit B in its entirety. There are no less restrictive alternatives to sealing portions of these exhibits that refer to the FTC's nonpublic investigation.

CONCLUSION

Pursuant to Local Civil Rule 5(g) and § 5.6 of the Protective Order (Dkt. #160), Plaintiffs respectfully request that the Court temporarily seal Exhibit B and portions of Exhibit E (highlighted in blue in the version filed under seal) so that Amazon has an opportunity to provide its basis for sealing those documents. Plaintiffs further request that the Court permanently seal narrow portions of Exhibits B-E, G, and L (highlighted in yellow) that refer to a nonpublic FTC investigation.

¹ Plaintiffs proposed to redact the portions of Exhibit E identified by Amazon, which are not cited in Plaintiffs' Motion to Compel, in order to reduce the number of sealing issues before the Court. Amazon, however, requested that Plaintiffs file those portions of Exhibit E under seal. Bolles Decl. ¶ 8.

1 Dated: April 25, 2024

I certify that this brief contains 646 words, in compliance with LCR 7(e)(4).

2 Respectfully submitted,

3 *s/ Emily K. Bolles*

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